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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

7 OLIVINE INTERNATIONAL
8 MARKETING,

9 Plaintiff,

10 v.

11 MARS, INCORPORATED,

12 Defendant.

2:10-CV-876 JCM (PAL)

13
14 **ORDER**

15 Presently before the court is defendant Mars International's motion to dismiss. (Doc.
16 #11). Plaintiff filed an opposition. (Doc. #13). Defendant filed a reply. (Doc. #15). Also
17 before this court is plaintiff's counter motion to amend its complaint. (Doc. #14).

18 Under Federal Rule of Civil Procedure 15, a plaintiff may, without leave of court, amend
19 its complaint once within 21 days of service so long as the defendant has not filed an answer.
20 Here, plaintiff is asking the court to grant its motion to amend its complaint. However, since this
21 is plaintiff's first amended complaint and the defendant has not filed an answer, plaintiff's
22 motion is superfluous, as plaintiff does not need leave of court to amend.

23 Therefore, in light of the amended complaint, this court declines to address the merits of
24 defendant's motion to dismiss.

25 Accordingly,

26 IT IS HEREBY ORDERED ADJUDGED AND DECREED that plaintiff's counter
27 motion to amend (doc. #14) be, and the same hereby is, DENIED as moot.

1 IT IS FURTHER ORDERED that defendant's motion to dismiss (doc. #11) be, and the
2 same hereby is, DENIED as moot.

3 IT IS FURTHER ORDERED that plaintiff properly file and serve its proposed amended
4 complaint forthwith.

5 DATED September 28, 2010.

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8 UNITED STATES DISTRICT JUDGE